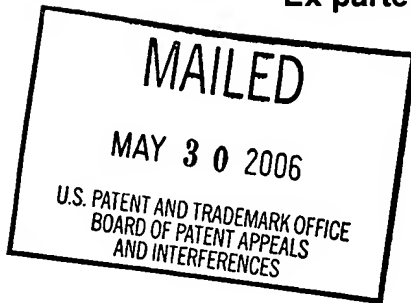


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DALE A. CHRISTENSEN and RICKY D. McGEE



Appeal No. 2006-1709
Application No. 10/786,664

ON BRIEF

Before CRAWFORD, NAPPI, and FETTING, **Administrative Patent Judges.**
FETTING, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims 1- 5, which are all of the claims pending in this application.

We AFFIRM IN PART .

BACKGROUND

The appellants' invention relates to a self propelled irrigation system. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. In combination:
a self-propelled irrigation system including an elongated pipeline
supported upon a plurality of spaced-apart drive units;
at least one of said drive units including a generally transversely extending
base beam having first and second ends;

- a first in-line drive assembly pivotally connected to said base beam adjacent said first end thereof;
- a second in-line drive assembly pivotally connected to said base beam adjacent said second end thereof;
- each of said first and second drive assemblies including:
 - (a) an elongated support member, having first and second ends, pivotally connected, about a generally horizontal axis which is generally transverse to the longitudinal axis of said base beam, to said base beam adjacent the associated end thereof;
 - (b) a first driven wheel rotatably mounted on said first elongated support member adjacent said first end thereof;
 - (c) and a second driven wheel rotatably mounted on said first elongated support member adjacent said second end thereof.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is are:

Chapman	6,131,833	Oct. 17,2000
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Claims 1-5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 1, 2, 4 and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Chapman.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejection, we make reference to the examiner's answer (mailed 11/30/2005) for the examiner's reasoning in support of the rejection, and to appellants' brief (filed 9/12/2005) and reply brief (filed 12/08/2005) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations, which follow.

Rejection of claims 1-5 under 35 U.S.C. § 112, second paragraph, as being indefinite

The examiner argues the following (Answer p. 5):

According to the specification, page 2, lines 7-24 and page 4, lines 5-11, the first in-line drive assembly and the second in-line drive assembly appear to be sub-assemblies of the spaced-apart drive units. See also page 5, lines 10-25. Therefore, the recitation of the "first in-line drive assembly" and the "second in-line drive assembly" recited in claim 1, lines 6 and 8, respectively, appear to be double inclusions of the drive units recited in line 3. The claim should have been amended to read--the at least one drive unit further including a first in-line drive assembly pivotally connected to said base beam adjacent said first end thereof and a second in-line drive assembly pivotally connected to said base beam adjacent said second end thereof--.

Applicant's claim construction is inconsistent. Applicant does not list the first and second drive assemblies as subassemblies of the at least one drive units but includes the elongated support member, first driven wheel, and the second driven wheel as subassemblies of the first and second drive assemblies.

The appellants agree that the in-line drive assemblies are sub-assemblies of the drive units, but maintain that the claim is definite in stating this relationship.

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with area with a reasonable degree of precision and particularity. *In re Johnson*, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In making this determination, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. Id.

The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. § 112, second paragraph, is whether the claims meet the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. Some latitude in the manner of expression and the aptness of terms is permitted even though the claim language is not as precise as the examiner might desire. If the scope of the invention sought to be patented cannot be determined from the language of the claims with a reasonable degree of certainty, a rejection of the claims under 35 U.S.C. § 112, second paragraph, is appropriate.

With this as background, we analyze the specific rejection under 35 U.S.C. § 112, second paragraph, made by the examiner of the claims on appeal.

We agree that one of ordinary skill in the art reading claim 1 would understand that the first and second drive assemblies are components of the drive units, and that although this relationship could have been clarified by the examiner's suggested phrasing or even a simple colon placed between the phrase "at least one of said drive units including" and the phrase "a generally transversely extending base beam having first and second ends;" along with indentation of the following elements to more graphically portray their subordination to the drive unit, the standard of definiteness as measured by the criterion of one of ordinary skill in the art, allows adequate comprehension. Such a person would immediately apprehend that, because the base beam is a component of the drive unit, the two drive assemblies that are connected to the base beam would likewise be components.

The rejection of claims 1-5 under 35 U.S.C. § 112, second paragraph, as being indefinite is therefore not sustained.

Rejection of claims 1, 4 and 5 under 35 U.S.C. § 102(b) as being anticipated by Chapman.

Appellant argues that Chapman's wheels are described by Chapman as idler wheels and cannot be the claimed "driven wheels" and that Chapman's wheels are not adjacent the support. (See brief at page 5 and 6.)

The examiner responds that Chapman's wheels are indeed driven by the belt tread used by Chapman. (Chapman Fig. 4 reference number 50)

We have searched the specification and found no definition for the term "driven wheel," and although the appellants' arguments that an idler wheel cannot be considered driven are pertinent, they are not persuasive. Where a term's definition is not in the intrinsic evidence of the existing record, we may resort to dictionaries and technical references in the relevant art to elicit the proper meaning of a term. To this end, the "Machinery's Handbook (26th Edition), by Oberg, Jones, Horton and Ryffell, Industrial Press, 2000, at p. 2372 does show that the term, in a flexible belt drive environment such as Chapman's, refers to a wheel that is driven by the belt. Chapman's wheels are, as the examiner indicates, so driven by the belt, and accordingly we must agree that Chapman's wheels read on the claimed driven wheels.

As to appellants' argument that Chapman's wheels are not adjacent to the support, we find this unpersuasive given that the claim requires that the wheels be adjacent to the support end, and not to the support as such. Inspection of Chapman's figures clearly show this to be the case.

Appellants' argument as to claim 4 and 5 rely on the arguments to claim 1 and are accordingly treated the same.

Accordingly, the rejection of claims 1, 4 and 5 under 35 U.S.C. § 102(b) as being anticipated by Chapman is sustained.

Rejection of claim 2 under 35 U.S.C. § 102(b) as being anticipated by Chapman.

Appellants argue that Chapman's wheels are not positioned laterally of the beam. (See brief at page 6.)

Examiner responds that Chapman's wheels are off the center line of the beam and therefore are not positioned laterally of the beam.

Claim 2 is explicit in requiring that the driven wheels are positioned laterally of the support, not of the center line of the support. Therefore we must conclude that Chapman's placement of the wheels do not read on claim 2.

Accordingly, the rejection of claim 2 under 35 U.S.C. § 102(b) as being anticipated by Chapman is not sustained.

CONCLUSION

To summarize,

the examiner's rejection of claims 1-5 under 35 U.S.C. § 112, second paragraph is not sustained;

the examiner's rejection of claims 1, 4 and 5 under 35 U.S.C. § 102(b) is sustained; and

the examiner's rejection of claim 2 under 35 U.S.C. § 102(b) is not sustained.

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No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART


MURRIEL E. CRAWFORD
Administrative Patent Judge


ROBERT NAPPI
Administrative Patent Judge


ANTON W. FETTING
Administrative Patent Judge

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